BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MELODY A. JONES	)	
Claimant	)	
	)	
VS.	)	
	)	
SAINT RAPHAEL DIRECT CARE, INC.	)	
Respondent	)	Docket No. 1,011,874
	)	
AND	)	
	)	
COMMERCE & INDUSTRY INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) appeal from the preliminary hearing Order entered by Administrative Law Judge (ALJ) Jon L. Frobish dated November 14, 2003.

ISSUES

Whether claimant's accident arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

Claimant is employed full time by respondent to provide care for claimant's mother, at her mother's residence. Claimant's job duties include providing meals, taking out trash and cleaning. On June 25, 2003, claimant went to her mother's apartment to assist her mother. While taking out the trash, claimant tripped on an uneven sidewalk and fell.

Respondent contends that the accident did not arise out of and in the course of claimant's employment because claimant was not scheduled to work the day of the

accident. Accordingly, respondent argues claimant was a volunteer. In support of its position, respondent cites the Board's decision in *Holt*.[1]

Conversely, claimant contends that she reguarly works more than 40 hours per week but, because she is limited to receiving pay for only 40 hours, she does not schedule herself for more than 40 hours. Nevertheless, claimant was performing work for her mother that was part of her regular job duties when her accident occurred. She immediately reported her accident to her supervisor and completed an accident report form.

For an injury to be compensable it must arise out of and occur in the course of the worker's employment.[2] In general, courts construe the Workers Compensation Act liberally for the purpose of bringing employers and employees within the coverage of the Act.[3] The phrases "arising out of" and "in the course of" employment, have separate and distinct meanings.[4] The phrase "arising out of" employment points to the cause or origin of the accident and requires some causal connection between accidental injury and the employment. The phrase "in the course of" employment relates the time, place and circumstances under which the accident occurred and means the injury happened while the worker was at work and in the employer's service.[5] In *Holt* the Board said:

> The Appeals Board finds claimant's injury suffered on March 14, 1995, did arise out of claimant's employment as it was claimant's obligation to perform certain activities behind the bar, retrieving of beer for customers included.
>
> The Appeals Board finds that the injury suffered by claimant on March 14, 1995, did not occur in the course of claimant's employment as the evidence does not support claimant's contention that claimant was at work in her employer's service at the time of injury. Claimant's presence behind the bar was apparently a voluntary activity performed for a friend. No one with authority requested or authorized claimant's employment. Therefore, it cannot be found that claimant's injury arose out of and in the course of her employment with respondent. [6]

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[1] *Holt v. CS Investments, Inc.*, Docket No. 201,229, 1996 WL 385311 (Kan. WCAB June 21, 1996).

[2] *Brobst v. Brighton Place North,* 24 Kan. App. 2d 766, 955 P.2d 1315 (1997).

[3] *Kinder v. Murray & Sons Constr. Co.,* 264 Kan. 484, 957 P.2d 488 (1997); *Chapman v. Beech Aircraft Corp.*, 258 Kan. 653, 907 P.2d 828 (1995).

[4] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[5] *Kindel v. Ferco Rental Inc.,* 258 Kan. 272, 899 P.2d 1058 (1995); *Hormann v. New Hampshire Ins. Co.,* 236 Kan. 190, 689 P.2d 837 (1984).

[6] *Holt, supra,* at 6.

It is not required that claimant be "on the clock" and receive payment for the services in order for the claim to be compensable.[7] In *Palmer* claimant went to respondent's office to pick up her paycheck and was injured. The business was closed and claimant was not "on the clock." Nevertheless, her claim was found compensable. The court noted: "It is simply illogical to allow *Lindberg* to escape workers compensation liability merely because *Palmer* chose to accept the offer authorizing her to pick up her pay check on a day the plant was closed to the public."[8]

In the case at hand, claimant was respondent's employee and was performing her regular duties for respondent when she was injured. It would be illogical to find that claimant was not in the service of her employer simply because she was not receiving payment for her services.

The Board acknowledges that its holding in this appeal cannot be entirely distinguished from its holding in *Holt*. It should be noted, however, that *Holt*, like this decision, was an appeal from a preliminary hearing order. Accordingly, it was decided by only one member of the Board. [9] Moreover, *Holt* was decided in 1996, which was before the Board's and the Kansas Court of Appeal's decisions in *Palmer*.

The Board finds claimant's accidental injury arose out of and in the course of her employment with respondent.

WHEREFORE, the Board affirms the November 14, 2003 Order entered by Administrative Law Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this _____ day of March 2004.

_____
BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Kim R. Martens, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

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[7] *Palmer v. Lindberg Heat Treating*, 31 Kan. App. 2nd 1, 59 P.3d 352 (2002).

[8] *Id.* at 2.

[9] K.S.A. 44-551(b)(2)(A).